

LETTER OPINION
2004-L-48

July 16, 2004

Mr. Tom Henning
Stark County State's Attorney
PO Box 130
Dickinson, ND 58602-0130

Dear Mr. Henning:

Thank you for your letter asking how county planning commission members are compensated. It is my opinion that county planning commission members are entitled to compensation pursuant to N.D.C.C. § 11-33-05 for the actual expenses they incur by serving on the commission but are not entitled to a salary or per diem under N.D.C.C. § 11-10-10(4).

ANALYSIS

Section 11-33-05, N.D.C.C., states in part: "Members of the [county planning] commission may be compensated for their actual expenses in the same manner as members of the board of county commissioners." (Emphasis added.) As you noted, county commissioners are entitled to "receive an annual salary or per diem as provided by resolution of the board." N.D.C.C. § 11-10-10(4). You ask whether N.D.C.C. § 11-33-05 entitles the planning commission members to compensation in the form of a salary or per diem under N.D.C.C. § 11-10-10(4). The phrase "actual expenses" in N.D.C.C. § 11-33-05 indicates that members of a county planning commission are only entitled to the actual expenses they incur in participating on the county planning commission. There is no provision requiring or authorizing them to be paid a salary for serving on the commission.

This interpretation is supported by the legislative history for N.D.C.C. § 11-33-05. Until a 1969 amendment added the phrase "actual expenses," N.D.C.C. § 11-35-05 provided that planning commission members served without any compensation. The legislative history indicates that the language was added in order to compensate planning commission members for the expenses they incurred to attend the meetings. See Hearing on H.B. 455 Before the House Comm. on Political Subdivisions, 1969 N.D. Leg.

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("[T]he county zoning people have a long distance to travel. . . . This just takes care of expenses, this is not a salary") (Feb. 4) (Statement of Rep. Strinden).

Thus, in my opinion, planning commission members are entitled to actual expenses incurred in serving on the commission but are not entitled to a salary or per diem under N.D.C.C. § 11-10-10(4).

Sincerely,

Wayne Stenehjem
Attorney General

sam/pg

This opinion is issued pursuant to N.D.C.C. § 54-12-01. It governs the actions of public officials until such time as the question presented is decided by the courts. See State ex rel. Johnson v. Baker, 21 N.W.2d 355 (N.D. 1946).